



Winston H. Hickox,
Secretary

California Environmental Protection Agency

Unified Program Bulletin

0304-3

DATE: September 3, 2003

TO: Unified Program Agencies
Other Interested Parties

FROM: Donald A. Johnson, Assistant Secretary for Local Programs

SUBJECT: Response to Comments on Proposed State Surcharge

During the 30-day public notice of the proposed State surcharge May 23, 2003, through June 22, 2003, the following eight entities submitted comments: California CUPA Forum, Bakersfield Fire Department, County of Los Angeles, Merced County, California Association of Environmental Health Administrators, Industrial Environmental Association, County of El Dorado, and City of Corona.

One group of comments expressed dissatisfaction with the type and extent of the notice, suggesting among other things that ratepayers should be individually noticed, additional justification and rationale should be provided in the notice, and that placing a notice in the California Regulatory Notice Register is neither fair nor provides due process.

The type and extent of the public notice is mandated in California Code of Regulations, Title 27, section 15240 (e): "The Secretary shall publish the amendments to the state surcharge in the California Regulatory Notice and accept comments on the proposed surcharge for 30 days."

Prior to publishing the proposed state surcharge, Cal/EPA presented the proposal at the Unified Program Administration and Advisory Group (UPAAG) meeting and Unified Program Roundtable in late March 2003. In addition to the required notice, Cal/EPA individually notified each Unified Program Agency (UPA) and other interested parties via the Unified Program list server on the date the notice was published in the Regulatory Notice Register (May 23, 2003). The notice was also an item in the June Unified Program Newsletter that is electronically distributed to all UPAs and other interested

parties as well as being posted on the Cal/EPA Unified Program web page. Cal/EPA believes this effort far exceeds the legally required notice, is fair, and provides appropriate due process.

There is no legal requirement for individual notice to the nearly 120,000 ratepayers, and such notice would be both virtually impossible and prohibitively expensive. UPAs are responsible for assessing and collecting the surcharge as an element of the required single fee system and individually maintain contact information for billing purposes. The Secretary does not maintain this information or require it to be submitted. Such an effort would add to the reporting responsibilities and costs for UPAs, require development of an appropriate data system and infrastructure within Cal/EPA, and require significant and unnecessary increases in the proposed surcharge. Cal/EPA does not believe this is consistent with the statutory mandate to recover only those costs that are necessary and reasonable.

Comments received stating that the surcharge is, or should be, limited to an appropriate Consumer Price Index (CPI) are not supported either by current law or the rationale provided in the Notice for this proposal.

Health and Safety Code (HSC) Chapter 6.11, Section 25404.5, requires the Secretary to annually determine the surcharge at a level "to cover the necessary and reasonable costs of the state agencies in carrying out their responsibilities under this chapter." The Notice published on May 23, 2003, identified the current surcharge as artificially lower than this standard due to the existence of an account balance that had build up when resources were temporarily redirected to other activities with other funding sources. Current rates were set at this lower level with the understanding that account balances would be depleted at the end of two years, and the surcharge would need to increase to fully recover costs. This proposal will achieve this mandate. In contrast, CPI escalators are intended to adjust fees in response to inflationary pressures. They are neither intended to address nor are adequate to address the changes that are the subject of this proposal.

Several comments addressed the lack of detailed data that support the Secretary's decision. This data is available, was used to establish this proposal, and in summary and graphical fashion was presented to the UPAAG and Unified Program Roundtable prior to the Notice. This information is available to those who wish to review it.

Comments were received alleging that businesses may not be able to easily absorb these increases due to the current difficult economic climate and business reductions already made. While the increases are significant from a percentage standpoint, it is also important to understand that these increases are still modest in absolute dollar amounts. The general HazMat fee is proposed to increase \$6.50 per year, and the underground tank fee is proposed to increase \$5 per year for each regulated entity.

The Cal/ARP fee is assessed differently: only one fee per business in each jurisdiction, regardless of the number of regulated units, as opposed to the other two fees that are assessed per regulated site. Cal/ARP regulation is also only applicable to the larger businesses handling materials in large quantities exceeding the threshold levels of the program. These fees, which are applied to some of the largest businesses in the State, are proposed to increase \$150 per year. Small businesses, with only one underground tank and subject to the general HazMat and Underground Tank fee, would experience an increase of less than one dollar per month. A larger business, subject to only the Cal/ARP and general HazMat fee, would experience an increase of approximately \$13 per month. These modest amounts do not appear to impose a significant economic burden on either large or small businesses.

One comment stated that some UPA jurisdictions do not set fees at a level necessary to fully recover their costs as a mechanism to encourage businesses to locate in their area. This action apparently limits the total fees the UPA in that jurisdiction can collect so that an increase in the surcharge appears to result in a corresponding decrease in the revenue available to the UPA.

While the unintended impact of this proposal is unfortunate, it is not the result of the mandated action of the Secretary. HSC, Chapter 6.11, Section 25404.5(a)(2) requires the governing body of each CUPA to establish the amount to be paid by each person regulated by the Unified Program under the single fee system at a "...level sufficient to pay the necessary and reasonable costs incurred by the Certified Unified Program Agency..." The State surcharge is intended to be an addition to those local fees necessary to support the local program and does not reduce revenue to any UPA unless the local governing body makes a decision that has this result.

In addition, a number of comments specifically opposed the Cal/ARP fee for several reasons including: 1) the fee is assessed in an inequitable manner and should be changed; 2) the fee is higher than local fees that cover program implementation, and 3) concerns exist regarding the level of program support provided.

Unified Program fees are typically assessed based on each regulated "site," while the Cal/ARP surcharge is assessed once per business in each jurisdiction regardless of the number of sites, resulting in an inequity. Cal/EPA agrees with this comment and is currently proposing revision of this regulation in a rulemaking planned for this fall. This inequity also results in the perception that the state surcharge is higher than local fees due to the substantially lower numbers of ratepayers under this system. A direct comparison is not accurate without an aggregation of the local fees assessed on each business in a jurisdiction. However, resolution of the assessment inequity through promulgation of the regulations identified above will also help address this comment.

Based on a consideration of the comments identified above and the change in the method of assessment the Secretary has determined that the Cal/ARP portion of the surcharge will be reduced from the proposed \$350 to \$270.

Additional comments regarding the effectiveness of funds spent on this activity are outside the scope of the surcharge setting process and will be addressed separately.

Additional comments supported the proposed Hazmat and Underground Tank surcharge or stated that these increases may be appropriate upon review of supporting documentation.

Based on consideration of the comments described above, the Secretary has determined that the proposed state surcharge rates are necessary and reasonable costs of the State Agencies with Unified Program responsibilities. The final rates will be published in the California Regulatory Notice Register in September 2003.